

REMARKS

Applicant confirms election of the invention of Species 1 of Figures 1-10, but notes that the statement on page two of the Office Action as to which claims this is readable upon appears incorrect and also inconsistent with the claims that have been withdrawn from further consideration as set forth on page 2 of the Office Action. In particular, the claims readable on the elected species should be claims 1-8, 13-15, 17-19, 21-25, 30-35, 39-44, 48, 49, 51 and 52, as set forth on the Office Action Summary. Applicant confirms withdrawal from consideration of claims 9-12, 16, 20, 26-29, 36-38, 45-47, 50, 53, and 54. However, applicant believes that all independent claims 1, 13, 30, 39 and 48 are generic to all embodiments such that if generic claims are allowed the non-elected dependent claims depending thereon should be considered and allowed.

With respect to the issues raised under § 112, starting on page 2 of the Office Action, it is noted that the list of claims rejected under § 112 includes claims that have been withdrawn such as claims 16 and 20. In any event, the apparent confusion deals primarily with terminology in only claims 13, 30 and 39. However, these claims are believed accurate as written and sufficiently definite.

With respect to claims 13 and 30, the confusion as stated in the Office Action seems to be based upon whether the spur includes the spur head member or if these are separate components both attached to the first end portion of the spur arm. As claimed, the spur is recited as a separate element from the spur head member. In particular, the spur is recited as being attached to the first end portion of the spur arm and projecting in a first direction, and the spur head member is recited as also being attached to the first end portion of the spur arm and projecting in a second direction. The spur projects from the spur arm on a side of the spur arm toward the support member against which the claimed bending jack is placed for pushing a wooden plank. The spur head member projects from the spur arm on a side of the spur arm away from the support member when the jack is in use. Again, in the claims the spur and the spur head member are treated as different claim elements. The same is true with respect to the claim 39 where the anchor member and the head member are recited as two different claim elements each attached to the anchor arm.

Applicant respectfully requests reconsideration of the rejection under § 102 of claims 1, 3, 48, 49, 51 and 52 and claims 13-15, 17, 24, 30, 31, 35, 39-41 and 44 as being anticipated by Tomcheck (1,231,461).

With respect to claim 1, Tomcheck fails to disclosed an arrangement of the push arm and spur head member recited in the claim. To aid in the discussion, it is first noted that the spur head member, which is attached to the spur bar and projects in an upward direction from the spur bar has a spur head portion positioned above and away from the spur bar for applying a downward driving force thereto to drive the spur into engagement with the support surface. As recited in the push arm element of claim 1 and as significantly different from the construction of Tomcheck, a portion of the push arm adjacent to the spur head member is positioned below the spur head portion such that the spur head portion can be engaged for driving the spur into engagement with the support surface without interference by the push arm. Thus, the push arm in the area of the spur head is below the spur head portion (the portion of the spur head member to which the downward driving force is applied to drive the spur into engagement with the support surface) so that the spur head portion can be engaged without interference by the push arm such as by an impact from a hammer.

This should be compared to Tomcheck where the spur head member/spur head portion (12') is positioned below the push arm (15), thus allowing the push arm to interfere with applying the driving force to the spur head portion. For example, in Tomcheck the spur head member/spur head portion (12') is positioned on the left side of the device at a height substantially below the height of the push arm, thus making it very difficult to strike the spur head with a hammer from the right side of the device to drive the spur into the support surface. A person using the Tomcheck device would have to move into position to be able to strike the support head member/support head portion (12') from the left side of the device. Even then, the push arm could still interfere with the user's applying a driving force thereto depending upon a path of travel used for the hammer head since the spur head member/spur head portion is located very closed to the elevated push arm.

As can most clearly be seen in Figure 1 in the present application, referring to the embodiment of the invention illustrated, the device (1) of the present application utilized

a spur assembly (2) where the spur head portion of the spur head member is positioned above and away from the spur bar and located well above the push arm such that it can be easily engaged using a hammer or other device for driving the spur into engagement with the joist (100) without interference from the push arm. This provides a significant benefit for the device of the present invention as recited in claim 1 and makes claim 1 patentable over Tomcheck.

For purposes of brevity, applicant will not repeat the discussion with respect each of the independent claims, but notes that each of the independent claims 1, 13, 30, 39, 48 expresses the same general concept just described although in somewhat different terminology, and hence for that reason alone all independent claims and thus all claims dependent thereon are not believed anticipated by Tomcheck. Of course, for there to be anticipation each and every element of a claim must be found in the cited reference and as described above, this is not the case with respect to Tomcheck.

It is further noted that Tomcheck is not an anticipating reference with respect to many of the claims due to other difference recited therein. Rather than itemizing each and every difference since the claim element noted above with respect to claim 1 and generally found in every claim is sufficient, applicant will only note one or two additional differences and then only with respect to independent claims. For example, independent claim 30 defines a central plane through which the handle rotates, the second end portion of the spur arm rotates, in which the spur is located, through which the second end portion of the push arm rotates, and in which the spur head member is located, to name a few. In Tomcheck, on the other hand, there is no such central plane and to the extent one defines a central plane as being the longitudinal plane in which the handle rotates, the spur is laterally offset therefrom by a significant distance. Also by way of example, independent claim 48 recites a push arm having spaced apart first and second push arm members defining a space therebetween with the spur arm positioned at least partially within that space. No such arrangements are shown in Tomcheck. Again, additional differences exists in the claims when compared to Tomcheck but for brevity those are not discussed.

With respect to the statement on page 4 of the Office Action that Tomcheck inherently discloses a stop, the stop referred to in claims 2 and 52 is attached to the

spur head member to engage the push arm to limit travel of the push arm relative to the spur bar. In Tomcheck the spur is pivotally attached to the handle by bolt (10) and has an extra component with a longitudinal slot (9) that ties the push head and the handle together rather than just the push arm. With such an arrangement there appears to be no need to use a stop to limit travel of the push arm relative to the spur bar, and none are shown.

Claim 2 is rejected as being unpatentable over Tomcheck alone or in view of Wallum (797,245). Claim 2 depends upon claim 1, and hence for the reasons assessed above, claim 2 is allowable. For purposes of brevity, applicant will not discuss the limitations in claim 2.

Claims 5, 6, 18, 19, 21, 32, 33, 42 and 43 are indicated as unpatentable over Tomcheck in view of Fredericks (375,147). As noted in this rejection and consistent with the statements of applicant above, Tomcheck does not disclose the push arm including spaced apart first and second push bars. For the reasons discussed above with respect to the independent claims, these rejected dependent claims are believed allowable over Tomcheck, and the missing element in Tomcheck discussed above is not supplied by Fredericks. Hence these claims are all believed allowable.

Further, to the extent Fredericks is alleged to show first and second arm member defining a space therebetween, applicant notes that the apparent reliance upon the angle arms (D') by which the push bar (C) is attached to the block (E) is misplaced and these angle arms do not meet the requirements of the claims. For example, in claim 5 the first and second push arm members that define a space therebetween each have a first end portion and a second end portion with the second end portion being pivotally attached to the handle and the first end portion being attached to the push head. No such arrangement is shown in Fredericks. A similar recitation is found in claims 18, 32, 42, hence these claims are distinguishable over Fredericks since the angle arms are not pivotally attached to the handle. Similarly, claims 6, 19, 21, 33 and 43 which depend from these claims are also distinguishable.

Applicant believes that all rejected claims are distinguishable over the prior art as presently written and in condition for allowance.

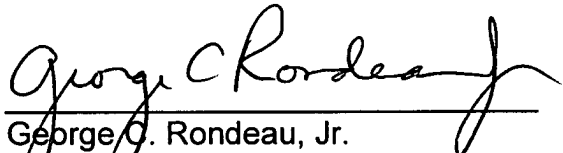
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Applicant wishes to sincerely thank the Examiner for the indication of allowability of claims 4, 7, 8, 22, 23, 25 and 34. In view of the foregoing comments, the claims on which they depend are also believed in condition for allowance as written, therefore rewriting of these allowable claims is not necessary.

Since all of the claims remaining in the application are now believed to be allowable, favorable consideration and a Notice of Allowance are earnestly solicited.

If questions remain regarding this application, the Examiner is invited to contact the undersigned at (206) 628-7739.

Respectfully submitted,
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